No. 16-1466

In the

Supreme Court of the United States

MARK JANUS,

Petitioner,

v.

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 31, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF *AMICUS CURIAE* CENTER FOR CONSTITUTIONAL JURISPRUDENCE IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

In *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), this Court upheld a state law compelling public school teachers to either join the teacher's union or pay the union an "agency fee." More recently, this Court criticized the decision in *Abood* as "questionable on several grounds" and based on unwarranted assumptions. *Harris v. Quinn*, 134 S. Ct. 2618, 2632 (2014). Because permitting compelled fees for what can only be described as political activity strikes at the core of the First Amendment right meant to preserve "our Nation's commitment to self-government," (*Knox v. Service Employees International Union, Local 1000*, 567 U.S. 298, 308 (2012)), the question presented in this case is as follows:

Should the Court overrule its prior decision in *Abood v. Detroit Board of Education* and instead hold that the First Amendment precludes government mandates that public employees pay a fee to a private association for purposes of lobbying state and local elected and administrative officials?

TABLE OF CONTENTS

QUESTIONS PRESENTED i
TABLE OF AUTHORITIES iii
IDENTITY AND INTEREST OF AMICUS 1
SUMMARY OF ARGUMENT 1
ARGUMENT 2
I. Public-sector "Collective Bargaining" Is Indistinguishable from Other Lobbying Activities. 2
II. Compelling Public Employees to Pay Agency Shop Fees for "Bargaining" Is Contrary to the Original Understanding of the First Amendment. 12
III. The Petition Clause Precludes a Finding that Limiting Competing Voices on a Matter of Public Interest Is a Government Interest that Could Support Infringement of Speech and Association Rights. 15
CONCLUSION 19

TABLE OF AUTHORITIES

Cases

Abood v. Detroit Board of Education,
431 U.S. 209 (1977)..... passim

City of Madison, Joint Sch. Dist. No. 8 v. Wisconsin Employment Relations Comm'n,
429 U.S. 167 (1972)..... 16, 17

E.R.R. Presidents Conference v. Noerr Motor Freight, Inc.,
365 U.S. 127 (1961)..... 17

Friedrichs v. California Teachers Association,
136 S. Ct. 1083 (2016)..... 1

Harris v. Quinn,
134 S. Ct. 2618 (2014)..... i, 1, 3

Keller v. State Bar,
496 U.S. 1 (1990)..... 12

Knox v. Service Employees International Union, Local 1000,
567 U.S. 298 (2012)..... i, 1, 8, 9, 15

Lehnert v. Ferris Faculty Ass'n,
500 U.S. 507 (1991)..... 9

Machinists v. Street,
367 U.S. 740 (1961)..... 5, 8

McIntyre v. Ohio Election Comm'n,
514 U.S. 334 (1995)..... 12

Miller v. Airline Pilots Ass'n,
108 F.3d 1415 (D.C. Cir. 1997)..... 7

Minnesota State Bd for Cmty Colleges v. Knight, 465 U.S. 271 (1984) 16, 17

New York Times Co. v. Sullivan, 376 U.S. 254, (1964) 12

Pacific Gas & Electric Co., 475 U.S. 1 (1986) 13

United States v. Cruikshank, 92 U.S. 542 (1875) 16

Other Authorities

4 Annals of Congress 12

Big Money Talks, California's Billion Dollar Club, Cal. Fair Political Practices Comm'n (Mar. 2010) 11

Blume, Howard & Poston, Ben, *How L.A.'s school board election became the most expensive in U.S. history*, L.A. Times (May 21, 2017, 4:00 AM) 10

Brown, Nick, *Puerto Rico's other crisis: impoverished pensions*, Reuters (Apr. 7, 2016) 4

Christie, Jim, *Stockton, California files for bankruptcy*, Reuters (June 28, 2012, 7:46 PM) .. 5, 6

Continental Congress, Declarations at Resolves, 14 October 1774, in 5 THE FOUNDERS' CONSTITUTION 17

Down and Out in Detroit, Wall St. J. (July 18, 2013, 8:08 PM) 5

Gely, Rafael, et al., *Educating the United States Supreme Court at Summers' School: A Lesson on the "Special Character of the Animal"*, 14 Emp. Rights & Emp. Pol'y J. 93 (2010) 9

History of Congress, February, 1799 12

Jefferson, Thomas, Letter to Edward Carrington (1787), in 5 The FOUNDERS' CONSTITUTION 14

Jefferson, Thomas, A Bill for Establishing Religious Freedom (1779), in 5 THE FOUNDERS' CONSTITUTION 12, 13

Jefferson, Thomas, First Inaugural Address (1801), in 5 THE FOUNDERS' CONSTITUTION 13

Jefferson, Thomas, Instructions in the Virginia Convention to the Delegates to Congress, August, 1774, in 5 THE FOUNDERS' CONSTITUTION 17

Knox v. Service Employees International Union, Local 1000, Supreme Court No. 10-1121, Brief for Respondents 15

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Madison, James, Public Opinion (1791), in 2 THE FOUNDERS' CONSTITUTION 14

McGinnis, John O. & Schanzenbach, Max, *The Case Against Public Sector Unions*, 162 Hoover Inst. Pol'y Rev. (Aug. 1, 2010) 10

Plumer, Brad, *Detroit's pension problems, in one chart*, Wash. Post (July 19, 2013) 5

Rawle, William, A VIEW OF THE CONSTITUTION OF THE UNITED STATES 124 (1829) in 5 THE FOUNDERS' CONSTITUTION 17

Roosevelt, Franklin D., Letter to Luther C. Steward, President, National Federation of Federal Employees, Aug. 16, 1937 8

Seelye, Katharine Q., *Detroit Census Confirms a Desertion Like No Other*, N.Y. Times (Mar. 22, 2011) 5

Story, Joseph, COMMENTARY ON THE CONSTITUTION in 5 THE FOUNDERS' CONSTITUTION 17

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Top Contributors to Primarily Formed Committees: November 2016 General Election 11

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Walsh, Mary Williams, *Puerto Rico Declares a Form of Bankruptcy*, N.Y. Times (May 3, 2017) 3

Wollan, Malia, *Years of Unraveling Then Bankruptcy for a City*, N.Y. Times (July 18, 2012) 6

Rules

Sup. Ct. Rule 37.3(a) 1

Sup. Ct. Rule 37.6 1

IDENTITY AND INTEREST OF AMICUS

The Center for Constitutional Jurisprudence[1] is the public interest law arm of the Claremont Institute, whose stated mission is to restore the principles of the American founding to their rightful and preeminent authority in our national life. This includes the protections for freedom of speech, association, and petition enshrined in the First Amendment. The Center has previously appeared before this Court as *amicus curiae* in several cases addressing the constitutionality of compelled speech and association, including *Friedrichs v. California Teachers Association*, 136 S. Ct. 1083 (2016); *Harris v. Quinn*, 134 S. Ct. 2618 (2014); and *Knox v. Service Employees International Union, Local 1000*, 567 U.S. 298 (2012).

SUMMARY OF ARGUMENT

"Collective bargaining" by public sector employee unions is an inherently political activity. The union lobbies legislative and elected government officials in pursuit of its policy and economic goals in the same manner as any other special interest group. It differs only in the fact that state law allows the union to exact compelled dues from nonmembers. This Court upheld the constitutionality of this arrangement in *Abood*, but has since questioned that ruling. *Abood* should be overruled because the decision failed to address the

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[1] Pursuant to this Court's Rule 37.3(a), this amicus brief is filed with the consent of the parties. Pursuant to Rule 37.6, Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part and that no person or entity other than Amicus Curiae, its members, or its counsel made a monetary contribution to fund the preparation and submission of this brief.

underlying purposes of the Speech Clause of the First Amendment. Further, the *Abood* court failed to analyze the claimed government purpose behind the infringement. The stated purpose was to limit the number of individuals and organizations that petitioned government on the issues surrounding public employees. While government officials may choose with whom they will meet, the Petition Clause of the First Amendment precludes a legitimate interest in limiting those who may speak to government on a matter of public interest. Thus, limiting the number of interested citizens and groups who may speak on a matter of public concern cannot serve an interest that justifies infringement of speech and association rights.

ARGUMENT

I. Public-sector "Collective Bargaining" Is Indistinguishable from Other Lobbying Activities.

Forty years ago, the Court in *Abood* founded its holding on several conceptual errors. First, the Court assumed that "[p]ublic employees are not basically different from private employees." *Abood*, 431 U.S. at 229. But public employees *are* different from private-sector employees. And, more importantly, public employers are fundamentally different from private-sector employers. Ignoring these important differences led to a ruling that authorized infringement of nonmember First Amendment liberties.

Contracts between private employers and unions representing private-sector employees are private decisions generally disciplined by market forces. Clyde

Summers, *Public Sector Bargaining: A Different Animal*, 5 U. Pa. J. Lab. & Emp. L. 441 (2003). Errors in analysis by the employer can lead to the employer going out of business. That result is tempered, however, by the fact that competitors in the private sector can continue to provide the goods and services or new firms can rise to fill the gaps. Competing firms can also provide new employment opportunities for workers of an employer whose private business has closed.

By contrast, public-sector contracts are not private decisions. The contract itself is an instrument of government. *Id.* at 442. The decision to spend more money on a particular public program means either higher taxes or cuts to other public services. Importantly, a state cannot go out of business because of mushrooming costs of public employee wages and benefits. *See Harris*, 134 S. Ct. at 2632 n.7.

Like Illinois and other states, the territory of Puerto Rico is facing a debt crisis but cannot declare bankruptcy. Congress is now struggling to deal with Puerto Rico's debt crisis. The federal government passed a law last year called Promesa to give the island a special debt restructuring process. Mary Williams Walsh, *Puerto Rico Declares a Form of Bankruptcy*, N.Y. Times (May 3, 2017).[2] The island faces $123 billion in debt, including $49 billion in unfunded pension obligations. *Id.* Puerto Rico owes retired public workers over $40 billion and more than $13 billion of that is owed to retired teachers. Mary Williams Walsh, *In Puerto Rico, Teachers' Pension Fund Works*

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[2] Available at https://www.nytimes.com/2017/05/03/business/dealbook/puerto-rico-debt.html.

Like a Ponzi Scheme, N.Y. Times (Mar. 8, 2017).[3] Working teachers in Puerto Rico cannot expect to get back the money they have contributed to the pension fund because most of the money they pay into the fund is immediately paid out to retirees, and the fund is expected to run out of cash entirely next year. *Id.* The lack of any effort by lawmakers to reform teachers' pensions in Puerto Rico has been attributed to the great lobbying power of teacher groups. Nick Brown, *Puerto Rico's other crisis: impoverished pensions*, Reuters (Apr. 7, 2016).[4] Although Congress has enacted special relief for Puerto Rico, there is no guaranty that it will do so for Illinois, California, Michigan, or other states with large unfunded pension obligations.

Cities, on the other hand, can declare bankruptcy. Detroit filed the largest-ever bankruptcy in our nation's history in July 2013. Joseph Lichterman & Bernie Woodall, *In largest-ever U.S. city bankruptcy, cuts coming for Detroit creditors, retirees*, Reuters (Dec. 3, 2013).[5] The city faced an estimated debt of $18.5 billion and struggled to provide basic public amenities, like police and fire services, to its 700,000 residents. *Id.* Detroit's deterioration was marked by 78,000 abandoned buildings and 40 percent of its streetlights going dark. *Id.* Twenty-five percent of Detroit's population, a total of 237,500 of its residents,

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[3] Available at https://www.nytimes.com/2017/03/08/business/dealbook/puerto-rico-teacher-pensions.html.

[4] Available at https://www.reuters.com/investigates/special-report/usa-puertorico-pensions/.

[5] Available at http://www.reuters.com/article/us-usa-detroit-bankruptcy-judge/in-largest-ever-u-s-city-bankruptcy-cuts-coming-for-detroit-creditors-retirees-idUSBRE9B20PZ20131203.

fled the city between 2000 and 2010. Katharine Q. Seelye, *Detroit Census Confirms a Desertion Like No Other*, N.Y. Times (Mar. 22, 2011).[6] Detroit's financial woes had, in large part, to do with unrealistic pension promises to city employees created in collective bargaining. The *Wall Street Journal* explained: "Motown's problems have been mounting for six decades and are the result of economic decline and rule by government unions. City Hall made unsustainable promises to public employees so retirement obligations now constitute half of its $18.5 billion debt." *Down and Out in Detroit*, Wall St. J. (July 18, 2013, 8:08 PM).[7] Although Detroit borrowed $1.4 billion in 2005 "to plug a hole in its pension fund," everything collapsed under poor management and the 2008 financial crisis. Brad Plumer, *Detroit's pension problems, in one chart*, Wash. Post (July 19, 2013).[8]

The City of Stockton, California declared insolvency one year before Detroit in June 2012. Jim Christie, *Stockton, California files for bankruptcy*, Reuters (June 28, 2012, 7:46 PM).[9] Stockton's top creditor was the California Public Employee's Retirement System, which manages the city's pension plan. The system claimed $147.5 million for unfunded pension obligations. *Id.*

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[6] Available at www.nytimes.com/2011/03/23/us/23detroit.html.

[7] Available at https://www.wsj.com/articles/SB10001424127887324448104578.

[8] Available at https://www.washingtonpost.com/news/wonk/wp/2013/07/19/detroits-pension-problems-in-one-chart/?utm_term=.e60f2e7646a7.

[9] Available at https://www.reuters.com/article/us-stockton-bankruptcy/stockton-california-files-for-bankruptcy-idUSBRE85S05120120629.

The public employee has dual interests that may well be in conflict. As an employee, the worker may enjoy the benefit of more salary, richer benefits, and a pension. As a citizen and taxpayer, however, the employee's interest may well be very different. The citizen may worry about whether restrictions limiting competition for his or her job will have an impact on public health or leave some children without the care they need. There is also the danger that a mandated pension may never be paid out if there is a bankruptcy at the city level. He or she may also worry about the public services that must be cut to finance higher wages for his or her job.

This happened in Stockton, California. City leaders overspent funds and took on the crushing costs of pension obligations and $417 million in retiree health benefits. Malia Wollan, *Years of Unraveling Then Bankruptcy for a City*, N.Y. Times (July 18, 2012).[10] Stockton had to cut 25 percent of its police officers, 30 percent of its fire department, and 40 percent of all other city employees. *Id.* These cuts were made against the backdrop of serious threats to public safety. There was a record 58 homicides in 2011 and 35 homicides halfway through 2012. *Id.* This rise in violent crime stopped city leaders from cutting more of the police budget. Christie, *supra*. To leave its public employee pensions untouched and to salvage the city's public services, Stockton chose to cancel its promise to its retiree to provide a medical program to them. Even with these cuts, the city defaulted on

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[10] Available at http://www.nytimes.com/2012/07/19/us/years-of-unraveling-then-bankruptcy-for-a-city.html.

more of its municipal bonds – an investment often relied on for private sector pensions. *Id.*

These decisions are not "private contract" choices. Instead, they are the type of decisions in which all citizens expect to have a voice. The District of Columbia Circuit noted this problem two decades earlier in *Miller v. Airline Pilots Ass'n*, 108 F.3d 1415 (D.C. Cir. 1997). The precise issue presented was whether the union could compel dissenters to contribute toward the cost of lobbying on safety related issues. *Id.* at 1422. The court explained that while all pilots may be interested in airline safety, they will not all agree on the cost of that safety: "The benefits of any regulation include trade-offs." *Id.*

That issue of trade-offs is present in every lobbying campaign by public employee labor unions. Teachers may want higher pay, but are they willing to accept the trade-offs of higher taxes, reduced public services, possibly endangered pension security, and larger class sizes? How is it that only one side of the debate, the public employee union's position, is privileged by the ability to coerce payments from dissenters to support the lobbying?

The conflict between the personal interests of public employees and the interests of the taxpaying public is why, in a letter on the collective bargaining of federal employees, President Franklin Roosevelt asserted "meticulous attention should be paid to the special relationship and obligations of public servants to the Government." Letter to Luther C. Steward, President, National Federation of Federal Employees,

Aug. 16, 1937.[11] Roosevelt argued: "All Government employees should realize that the process of collective bargaining as usually understood cannot be transplanted into the public service." *Id.* Roosevelt was worried about whether public employees would be tempted to be more loyal to their union than to the government, despite the paramount obligation of public employees to serve the interests and welfare of the "whole people." *Id.*

President Roosevelt's concerns remain valid. Because public employees are required, as a condition of continued employment, to pay a private association to lobby elected and administrative state and local officials, the public employee union is given immense political power at the expense of all other interest groups. It is time, therefore, to pay meticulous attention to this arrangement.

This Court recognized that federal law could not empower labor unions to force nonmembers to financially support political and ideological causes that are unrelated to the costs of collective bargaining. *Machinists v. Street*, 367 U.S. 740, 749-50 (1961). But that distinction, borrowed uncritically by the *Abood* Court, is nonsensical in the context of public labor unions because collective bargaining in the public sector is inherently political. The unions in *Knox* had even argued that "all funds," including campaign support for ballot questions, "spent on 'lobbying...the electorate' are chargeable" because these expenditures were "germane" to the public employer's contracts

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[11] Available at www.presidency.ucsb.edu/ws/index.php?pid=15445.

and, thus, related to collective bargaining. *Knox*, 567 U.S. at 320. But the Court rejected that argument, stating "'lobbying...the electorate' is nothing but another term for supporting political causes and candidates." *Id.*

The *Knox* ruling was not the first time this Court recognized the difficulty of distinguishing between "collective bargaining" and lobbying in the public sector. In *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507, 519 (1991), the Court noted that "[t]he dual roles of government as employer and policy maker...make the analogy between lobbying and collective bargaining in the public sector a close one." Although the Court tried to draw a line between compelling dissenting employees to finance lobbying the government to win ratification of a negotiated agreement and other lobbying, there is no line between collective bargaining and politics. *Id.* at 520; *see* Rafael Gely, et al., *Educating the United States Supreme Court at Summers' School: A Lesson on the "Special Character of the Animal"*, 14 Emp. Rights & Emp. Pol'y J. 93 (2010). This is because when a public employee union bargains for higher wages and other benefits, it is arguing for a public policy that devotes more resources to programs staffed by its members at the expense of other programs.

Public employee unions have already established themselves as a major political force, "tak[ing] many positions during collective bargaining that have powerful political and civic consequences." *Knox*, 567 U.S. at 310. This Court should consider the impact on government structure of allowing these unions to continue to coerce payments from dissenting employees.

Public entities are in danger of capture by public sector unions in pursuit of their limited, short-term political goals. This danger recently presented itself in last spring's Los Angeles Board of Education races in California. United Teachers Los Angeles was the top spending union group in these elections, paying about $4.13 million. Howard Blume & Ben Poston, *How L.A.'s school board election became the most expensive in U.S. history*, L.A. Times (May 21, 2017, 4:00 AM).[12] Much of that came from other teachers unions, including the American Federation of Teachers, the National Education Association, and the California Teachers Association, contributing $1.2 million, $700,000, and $250,000, respectively. *Id.* Because public employee unions can seek to take over the public agencies they lobby, the dissenting employee as citizen and taxpayer has special reason to be concerned. The government cannot be responsive to the citizen and taxpayer when the interests of public-sector labor unions are driving public policy.

Member dues (both voluntary and coerced) allow public employee unions to amass significant resources to be employed in political campaigns. John O. McGinnis & Max Schanzenbach, *The Case Against Public Sector Unions*, 162 Hoover Inst. Pol'y Rev. (Aug. 1, 2010).[13] In California, for example, a study by the California Fair Political Practices Commission showed that, in a 10-year period between 2000 and 2009, the California Teachers Association was the top

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[12] Available at http://www.latimes.com/local/la-me-edu-school-election-money-20170521-htmlstory.html.

[13] Available at https://www.hoover.org/research/case-against-public-sector-unions (last visited Oct. 21, 2017).

spending political organization in the state by a wide margin. Big Money Talks, California's Billion Dollar Club, Cal. Fair Political Practices Comm'n (Mar. 2010) at 10.[14] The public teachers union spent more than $200 million on political campaigns, ballot initiatives, and lobbying during that period. Another public employee union, the California State Council of Service Employees, ranked number two, spending $107 million in the same period. *Id.* at 10.

The California Teachers Association is an example of a public union flexing its financial muscle and influencing state politics. Sometimes called California's "fourth branch of government," the powerful public teachers union spent more than $21 million in 2016 to successfully sponsor a ballot initiative to extend a sales and income tax increase. *Top Contributors to Primarily Formed Committees: November 2016 General Election.*[15]

This great political power of public employee unions is made possible in part by rulings of this Court that allow these unions to compel dissenters (as a condition of continued public employment) to finance the overt political activities of the unions. There is no "collective bargaining" with regard to public employees. There is only political lobbying of elected legislative and executive officials for scare state resources.

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[14] Available at www.fppc.ca.gov/content/dam/fppc/documents/Education-External-Division/Big_Money_Talks.pdf.

[15] Available at www.fppc.ca.gov/transparency/top-contributors/nov-16-gen/nov-16-gen-v2.html.

II. Compelling Public Employees to Pay Agency Shop Fees for "Bargaining" Is Contrary to the Original Understanding of the First Amendment.

Evidence of congressional intent or ratification arguments concerning the Free Speech Clause is scarce, at best. There was clear consensus that the measure prohibited "censorship," but there was debate about the extent to which the government could punish speech after it was published. That debate is revealed in the sources recounting the debates over the Sedition Act of 1798. *See* History of Congress, February, 1799 at 2988; *New York Times Co. v. Sullivan*, 376 U.S. 254, 275 (1964) (quoting 4 Annals of Congress, p. 934 (1794)). But to determine whether the founding generation intended the First Amendment to protect against compelled speech we must resort to the "practices and beliefs of the Founders" in general. *See McIntyre v. Ohio Election Comm'n*, 514 U.S. 334, 361 (1995) (Thomas, J., concurring).

While there was no discussion of compelled support for political activity, there was significant debate over compelled financial support of churches in Massachusetts and Virginia, the Virginia debate being the most famous. This Court has often quoted Jefferson's argument "That to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors is sinful and tyrannical." Thomas Jefferson, A Bill for Establishing Religious Freedom (1779), in 5 THE FOUNDERS' CONSTITUTION, University of Chicago Press (1987) at 77; quoted in *Keller v. State Bar*, 496 U.S. 1,10 (1990); *Chicago*

Teachers Union v. Hudson, 475 U.S. at 305 n.15; *Abood*, 431 U.S. at 234-35 n.31.

James Madison was another prominent voice in the Virginia debate, and again this Court has relied on his arguments for the scope of the First Amendment protection against compelled political support: "Who does not see...[t]hat the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?" James Madison, Memorial and Remonstrance Against Religious Assessments, in 5 THE FOUNDERS' CONSTITUTION at 82; quoted in *Chicago Teachers Union*, 475 U.S. at 305, n.15; *Abood*, 431 U.S. at 234-25 n.31.[16]

Although these statements were made in the context of compelled religious assessments, the Court easily applied them to compelled political assessments in *Chicago Teachers Union* and *Abood*. This makes sense because Jefferson himself applied the same logic to political debate. In his first Inaugural Address, Jefferson equated "political intolerance" with the "religious intolerance" he thought was at the core of the Virginia debate. Thomas Jefferson, First

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[16] The amount of compelled support is irrelevant to the constitutional injury. As Madison noted, even "three pence" is too much to compel. Madison, Remonstrance, *supra* at 82. Jefferson noted that freedom of conscience is violated when people are taxed to pay simple living expenses for their own pastors. Jefferson, Religious Freedom, *supra* at 77. *See also Pacific Gas & Electric Co. v. Public Utilities Comm'n*, 475 U.S. 1, 24 (1986) (Marshall, J., concurring).

Inaugural Address (1801), in 5 THE FOUNDERS' CONSTITUTION at 152. The theme of his address was unity after a bitterly partisan election, and the goal he expressed was "representative government" – a government response to the force of public opinion. *Id.*; Thomas Jefferson Letter to Edward Carrington (1787), in 5 The FOUNDERS' CONSTITUTION at 122 (noting, in support of the freedom of the press, "[t]he basis of our government [is] the opinion of the people"). Government cannot be responsive to public opinion unless individuals retain the freedom to reject politically favored groups,

Madison, too, noted the importance of public opinion for the individual liberty the Founders sought to enshrine in the Constitution. "[P]ublic opinion must be obeyed by the government," according to Madison, and the process for the formation of that opinion is important. James Madison, Public Opinion (1791), in 2 THE FOUNDERS' CONSTITUTION at 73-74. Madison argued that free exchange of individual opinion is important to liberty and worried that "real opinion" would be "counterfeited." *Id.* But "counterfeited" opinion is all the government receives from public sector unions who claim to represent the voice of *all* the employees – even those that refuse to join the union.

The voice of the individual is lost when state or federal law compels him to support a political organization he opposes. This compulsion is an effective censor of individual opinion. Instead of being drowned out by many genuine voices, the individual is forced to boost the voice of those he opposes or even despises. He is forced to pay for the counterfeiting of public

opinion, distorting democracy, and losing his freedom in one fell swoop.

III. The Petition Clause Precludes a Finding that Limiting Competing Voices on a Matter of Public Interest Is a Government Interest that Could Support Infringement of Speech and Association Rights.

As demonstrated above, the practice of public sector "collective bargaining" today is pure political activity, indistinguishable from any other single-interest group lobbying elected and executive officials for a larger piece of the public finance pie. Indeed, according to the Service Employees International Union, the State of California has expressly recognized that lobbying the state legislature is part of the scope of the union's "bargaining" activities and is fully chargeable to dissenting nonunion members. *Knox v. Service Employees International Union, Local 1000*, Supreme Court No. 10-1121, Brief for Respondents at 51. Compelled fees for such an activity infringe First Amendment rights of dissenting nonmembers. What possible government interest can there be to justify such an infringement?

This Court in *Abood*, again borrowing uncritically from cases concerning private-sector unions, ruled that the government interest in "labor peace" justified infringement on nonmember First Amendment rights to be free from compelled support of political activity. *Abood*, 431 U.S. at 224; *see Knox*, 567 U.S. at 311. "Labor peace" in this context means only avoiding "the confusion and conflict that could arise if rival teachers' unions, holding quite different views ... each

sought to obtain the employer's [school board's] agreement." *Abood*, 431 U.S. at 224. As this Court subsequently recognized in *Knox*, the *Abood* Court's acceptance of such a rationale as "justification for compelling nonmembers to pay a portion of union dues" was "something of an anomaly." *Knox* 567 U.S. at 311. Indeed, it was. Although this Court had previously noted the weakness of the First Amendment analysis in the cases leading up to *Abood*, the *Abood* Court did not explore just how anomalous the "labor peace" rationale really was when applied in the public-sector context.

Legislative and executive officials can certainly choose with whom they will meet. *Minnesota State Bd for Cmty Colleges v. Knight*, 465 U.S. 271, 284 (1984). But, they cannot forbid members of the public, including dissident, nonunion members, from submitting their own views on public issues. *City of Madison, Joint Sch. Dist. No. 8 v. Wisconsin Employment Relations Comm'n*, 429 U.S. 167, 175 (1972). This is so even if it leads to fear of "chaos in labor management relations." *Id.* at 173.

The right of individuals, either singly or jointly with others, to present their views to legislative and executive officials is protected by the First Amendment right of Petition. "The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances." *United States v. Cruikshank*, 92 U.S. 542, 552 (1875). As this Court has noted, "the whole concept of representation depends upon the ability of

the people to make their wishes known to their representatives." *E.R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 137 (1961). Any attempt to restrict the right of the people to instruct their representatives in government raises "serious constitutional questions." *Id.* at 138.

The right of Petition goes to the heart of our republican form of government. Joseph Story, COMMENTARY ON THE CONSTITUTION 3 § 1887 in 5 THE FOUNDERS' CONSTITUTION at 207; William Rawle, A VIEW OF THE CONSTITUTION OF THE UNITED STATES 124 (1829) in 5 THE FOUNDERS' CONSTITUTION 207. The denial of the right of Petition was one of the grievances leading up to the Declaration of Independence. *See* Continental Congress, Declarations at Resolves, 14 October 1774, in 5 THE FOUNDERS' CONSTITUTION at 199; Thomas Jefferson, Instructions in the Virginia Convention to the Delegates to Congress, August, 1774, in 5 THE FOUNDERS' CONSTITUTION 199.

Thus, neither the States nor the federal government can prohibit individuals or groups from communicating with elected and executive officials. *City of Madison*, 429 U.S. at 179 n.10. It may well make the jobs of legislators and executive officials "easier" and more "peaceful" if they can designate just one organization to be the "official" voice of a segment of the public on matter before the government – whether it be tax policy, health care, or the amount of tax revenues dedicated to public employee salaries. But the Petition Clause of the First Amendment prevents the government from restricting other voices.

The interest of the government under the "labor peace" rationale is to limit the number of voices to

which it must listen. This interest seems suspect, at best, when considered in light of the Petition Clause. However, here the government seeks to use this interest to justify compelling public employees to give financial support to the political and ideological activities of the public-sector labor union. This question is one that this Court has regularly recognized as presenting a "constitutional question of the 'utmost gravity.'" *Abood*, 431 U.S. at 219.

The Court has yet to consider whether a government interest in restricting the number of voices to which it must listen is permissible, let alone important or compelling. The fundamental error of the *Abood* Court was its acceptance, without consideration of this question, that the designation of a single organization as exclusive representative of a segment of the public before legislative and executive officials on a matter of public interest served a government interest of sufficient significance to allow infringement on the First Amendment rights of nonmembers. The decision in *Abood* should be overruled.

CONCLUSION

The *Abood* Court failed to take note of the important differences between public and private employees and public and private employers. Further, the Court, without analysis, found a state interest in limiting the voices that may speak to government on matters of public policy as not only lawful, but also sufficient to justify the infringement of the First Amendment liberties of nonmember dissidents. It is time for the Court to correct these errors and overrule *Abood*.

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